(Testimony of Wilbur J. Mills.)

transported to San Francisco on the 10th of October and were then delivered, 45 cases of them, were delivered to the steamship William S. Clark, and were billed by Nye & Nissen to the Government as Medium AA eggs.

Mr. Faulkner: At what time?

Mr. Pratt: They were delivered to the ship after they got here to San Francisco, obviously.

Mr. Faulkner: You mean the ship that Mr. Brown was on.?

Mr. Pratt. That is right.

Mr. Faulkner: So you claim that these eggs that are referred to in this record were on that ship in October?

Mr. Pratt: The identical eggs. [1591]

Mr. Faulkner: The identical eggs?

Mr. Pratt: Yes, sir.

Cross-Examination

Mr. Faulkner: Q. Mr. —— what was your name, please? A. Mills.

Q. Now, a quantity of eggs were received by your company——

Mr. Pratt: Only 45 cases of these eggs, Mr. Faulkner, only 45 cases of the 105.

Mr. Faulkner: That were on the ship that Mr. Brown was on?

Mr. Pratt: That is right.

Mr. Faulkner: Apart from any dates.

Q. Now, in addition to the records here, you gave answers from some other document on your lap there. What have you there, Mr. Mills?

(Testimony of Wilbur J. Mills.)

A. This is the billing part of the records, which if you were to attach that to one side, it would show the billing of those eggs, the storage charges.

Q. A quantity of eggs came into your plant in the month of February, 1943, is that right?

A. That is correct.

Q. And the quantity of eggs that came in on that date—for the account of Nye & Nissen, is that right? A. Yes, sir.

Mr. Faulkner: Is this Exhibit No. 120 still marked for identification?

The Clerk: That is in evidence.

Mr. Faulkner: Q. Is this the first record showing the receipt by you of eggs in the month of February, 1943? Is that [1592] the first of the series of papers prepared by your company in relation to the receipt of eggs?

A. I am not quite sure I follow you on that. Let's see. The first record—

Q. Mr. Mills, you have a series of records here that are from your files. A record follows the receipt of the merchandise, does it not?

A. Yes, sir.

Q. Is this the first record you made out on receipt of the merchandise?

A. This car sheet, this particular carload of eggs, that was the first record that would be made.

Q. Is that record made by you in your handwriting?

A. The storage part of it is made up by me, yes, sir.

(Testimony of Wilbur J. Mills.)

Q. When you say the storage part, you mean the carbon copy figures?

A. No, the records which were made for the storage, authorizing the storage of those eggs.

Q. Mr. Mills, you have a paper here and it is obviously a carbon copy of another document.

A. That is right.

Q. Also it is quite obvious that on a carbon copy a lot of original notations have been made at a different time, isn't that correct?

A. That would be made—the man that handles that, a particular portion thereof, would make his records thereon.

Q. Which part did you make?

A. I handled the storage of the 25 cases.

Q. May I have a red pencil, please?

A. And also the delivery of one case of bad eggs. [1592]

Q. Will you mark on that any writing that is in your handwriting? A. I will be glad to.

Q. Just circle it, please. Now, when did you make those notations?

A. At the time we were working the car, or while the car or the merchandise was being handled by us prior to storage.

Q. This sheet, Exhibit No. 120, calls, does it not, for 560 cases of eggs and 260 cases of eggs?

A. No, I don't believe it calls for that many, does it? I will be glad to tell you.

Q. Will you tell me what it calls for?

(Testimony of William J. Mills.)

A. 560 cases of eggs. That is the manifest in the car. The car is split up into different types of eggs.

Q. Did you not receive a shipping manifest from the railroad at the time of the receipt of those eggs?

A. Not from the railroad, no sir.

Q. Were the eggs delivered to your warehouse or were they delivered to Nye & Nissen?

A. They were delivered to our warehouse for the account of Nye & Nissen.

Q. For the account of Nye & Nissen?

A. That is right.

Q. Weren't they accompanied by a bill of lading? A. No, sir.

Q. Isn't it the usual practice of a railroad company to accompany all shipments with a bill of lading describing the goods that are delivered?

A. As a warehouse we receive bills of lading very, very seldom, except in the case of shippers' orders. We are instructed what is in a car; however, by the consignees generally.

Q. This carload, however, came on the Union Pacific Railroad, is that right?

A. That is correct.

Q. Do you know from this record the date that is was unloaded? A. Yes, I do.

Q. Is that February 8?

A. Unloaded on February 8 at 6 p. m.

Q. You haven't a copy of this so we can get——

A. No, I haven't. I will be glad to get you one.

Q. This carload, according to the face, says up,

(Testimony of Wilbur J. Mills.)

above, "Kind of merchandise, 560 cases of eggs," is that right? A. That is correct.

Q. What kind of eggs?

A. Seventy cases—do you want the different kinds in the car?

Q. Yes, if you will.

A. Seventy cases said to contain Henries, 260 cases of eggs with the lot number 2424, which would be an identification mark from the shipper; 204 cases of AA's and 26 mediums.

Q. AA mediums? A. Just medium.

Q. Without any classification?

A. That is correct.

Q. Where did you get all of that? I have been looking for that.

A. Here we are (indicating).

Q. Seventy cases of what? A. Henries.

Q. Is that a grade name?

A. That is a trade term showing eggs, I would say, before they have been graded. They are more or less receipt eggs.

Q. This 260 cases—what is this?

A. Their lot.

Q. 2424? A. Correct.

Q. Then there were 204 cases of AA's?

A. AA large, I believe it says, does it not? Or does it?

Q. That makes 274 cases. Now, where are the others? Where is the rest of the 560?

A. 70 cases plus 260 would be 330. 204 would be

(Testimony of William J. Mills.)

554—we have four items there I guess it would total. I am not sure. Here we are. That totals 560.

Q. 70, 260——

A. 204, 26. I have it memorized.

Q. And 26? A. That is right.

Q. 26 cases of Mediums. Now, the lot number, 2424, was the lot number of the shipper?

A. That is correct.

Q. Now, you divide these cases into a lot number of your own, is that right.

A. Only a certain portion, which is the Mediums.

Q. When did you do that?

A. On the 11th of February.

Q. Now, how did you classify the 204—in other words, you classified all of the Mediums, 26 cases of Mediums; you classified 25 of them as lot 3737?

A. That is correct.

Q. And what did you do with the other case?

A. The other case shows a delivery as a bad order, getting it for reconditioning purposes.

Q. How did you classify the 204 cases of AA?

A. Into Lot No. 3572—those were orders stored under Lot No. 3572.

Q. Is that your number? A. Yes sir.

Q. Was that done at the same time?

A. Yes sir.

Q. And Lot 3571—what was that lot?

A. That was eggs which had—that is one of the other portions of the car. Their lot No. 2424 was Lot 3571.

(Testimony of Wilbur J. Mills.)

Q. Was that lot number given by your company all at the same time?

A. We assigned the lot numbers.

Q. At the same time, the same day?

A. Oh yes, the same day.

Q. How was it that, as part of the original record, you have a lot number 3571 and as part of your original record lot 3572 consisted of the 26 Mediums? A. 3572?

Q. Yes. In other words, the lot number that you gave these eggs when you received them accounts for the entire quantity, the 70 cases of Henries and 260—those are you lot number 3571, aren't they?

A. The Henries are lot 3571, I believe. I want to see what I am talking about, please. The Henries were assigned to lot 3571, that is correct.

Q. That is right?

A. And they are lot number——

Q. In other words, this document, the first document that came into your place, the lot numbers that you allocated to those eggs are 3571 for 70 cases of Henries, 3571 for 260 cases, their lot 2424, and 3572, 204 cases of AA, and right in the same lot number you have 26 cases of Mediums?

A. No, I don't believe that is quite correct.

Q. That is the way it reads?

A. No. Pardon me.

Q. It is in the same column?

A. There is the assigning of a lot number, you will notice. You see, these were held on the dock.

Q. Where?

(Testimony of Wilbur J. Mills.)

A. On the dock. At the time we received this load, this car, on the 8th, we were instructed to store all eggs in this car with the exception of the Mediums, which were being held for some purpose—possibly sale there, or something of that nature—but all items except Mediums were ordered stored on the 8th.

Q. Where does it say that you were ordered to hold the Mediums?

A. I have it marked there, "Hold". Did you notice?

Q. It says, "1 Hold"; the figure 1.

A. You will notice the same thing as here. That is a line so our checkers—this takes up to there and this takes up there (indicating).

Q. And then it says, "Hold 26 cases of Mediums on order,"——

A. That says, "On Dock."

Q. On dock, 25, 1 short, is that right?

A. Yes.

Q. Now——

The Court: Now it is time to adjourn.

Mr. Faulkner: Yes, I had in mind your Honor has an engagement.

The Court: The jurors may be excused until ten o'clock tomorrow morning.

(Thereupon an adjournment was taken until tomorrow, Thursday, February 21, 1946, at ten o'clock a.m.)

Thursday, February 21, 1946, 10:00 a.m.

The Court: Do you waive the roll call, stipulating and agreeing all the jurors are present? You may proceed.

Mr. Pratt: There are one or two questions I want to ask the witness, Mr. Mills, in direct examination. Mr. Faulkner suggests that I do it now rather than wait until he gets through his cross-examination.

The Court: You may proceed.

WILBUR J. MILLS

recalled as a witness for the Government, having been previously sworn, testified as follows:

Mr. Pratt: Q. Mr. Mills, I asked you to produce certain warehouse receipts of your office, copies of warehouse receipts issued to Nye & Nissen in connection with these 105 cases of eggs that you referred to yesterday. Have you those papers?

A. I have.

Q. These came from the regular records of your company?

A. They do.

Q. They are your office copies of the warehouse receipts.

A. They are.

Q. On the dates indicated here?

A. That is correct, non-negotiable warehouse receipts.

Mr. Pratt: This is for 95 and this is for 10, mak-

(Testimony of Wilbur J. Mills.)

ing 105. If the Court please, these warehouse receipts are offered in evidence.

Mr. Faulkner: Same objection, your Honor, as made to the introduction of other documents through this witness.

The Court: The objection will be overruled. They will be admitted and marked.

(The documents were marked U. S. Exhibits 127 and 128, respectively, in evidence.)

Mr. Faulkner: In connection, your Honor, with the testimony that has been developed since your Honor returned on yesterday, it has been my understanding throughout that the obections that I made concerning certain transactions where quality at a given date is dependent upon testimony of a condition subsequent, is all subject to the general objections that I made. That is an understanding had before. That is right isn't it, Mr. Pratt?

Mr. Pratt: Yes, that is right.

The Court: Very well, let the record so show.

Mr. Pratt: Q. Mr. Mills, will you interpret these two exhibits, U. S. 127 and U. S. 128?

A. The cumulative total of the two warehouse receipts, or copies thereof, is 105 cases of plain Medium eggs, showing the amount we received and stored.

Q. Does it show the lot number of these eggs as stored in your warehouse.

A. It does. Lot 3737.

Q. Those are dated, are they?

(Testimony of Wilbur J. Mills.)

A. February 11th, showing merchandise to have been received out of car MWX 2282, and No. 264.

Q. It further shows, does it not, they were received on the 8th of September, I mean the 8th of February? A. That is correct.

Q. Is that correct as to both of them?

A. The one so specifies; the other paper, I might add that is merely a date, that is a storage item to indicate we charged the storage as of the date of receipt of the original merchandise.

Q. That is the 8th of February, 1943?

A. Right.

Q. I notice the statement here, "Plain Medium eggs." What does the word "plain" mean?

A. "Plain" means they are what we term natural, that is the way the egg came from the hen. If we used the word "processed" it would mean they were dipped in oil. They were plain.

Q. These were plain eggs and not processed?

A. That's right.

Q. Referring to the exhibit which you identified, is there anythting on any of these exhibits to show that they were plain eggs and not processed eggs?

A. No; they are merely current eggs here in all cases.

Q. There is nothing then in the railroad record of this car sheet, rather, that shows whether they were processed or plain? A. That's right.

Q. Can you tell from these documents which you identified yesterday when these eggs were shipped originally and from what point?

(Testimony of Wilbur J. Mills.)

A. There is nothing on the car sheet [17] We can check that with the Union Pacific. The other item we have no knowledge.

Q. There is no record here of when they were shipped? A. No.

Q. I direct you attention to this exhibit, 123, which is your ledger sheet. I will ask you whether that indicates as to this lot 3737 whether they were plain or processed eggs?

A. It is noted as plain.

Q. Plain? A. Yes.

Q. How did that record happen to be in that form, that they were plain eggs?

A. Well, we have knowledge, generally speaking, of whether eggs are plain or processed. It is a matter of consequence for us to know that.

Q. You say it is a matter of consequence whether they are plain or processed?

A. Plain eggs don't have the keeping qualities that processed eggs do.

Q. In the storage of these eggs at your place during this period from February until October, where were they stored in your premises?

A. In a refrigerated room.

Q. At what temperature?

A. 30 degrees is the temperature we maintain.

Q. Was that continuously maintained at that temperature? A. Yes, sir.

Q. I call your attention to this box, Mr. Mills. That is a characteristic egg case, is it not?

A. Yes.

(Testimony of Wilbur J. Mills.)

Q. I will ask you to step down here, if you will, and look at the stamp on the end of this egg case, and ask you if you can identify the one at the top in purple ink.

A. Lot 3737, marked Mediums.

Q. As far as the stamp 3737 is concerned, can you tell whether that is identical with the character of stamp you place upon merchandise when it comes into your warehouse and is given a number?

A. That is correct.

Q. Do you recognize the details of the figures there, so as to identify it as being the same character as put on by your company?

A. That's right.

Mr. Pratt: May this be marked for identification, please?

(Egg box was marked U. S. Exhibit 129 for Identification.)

Mr. Pratt: That is all.

Cross Examination (Resumed)

Mr. Faulkner: Q. Mr. Mills, your testified that the refrigeration in your plant was maintained at a certain temperature. A. That is correct.

Q. And you examined the temperature every day between——

A. Correct; our temperature charts were taken every day.

Q. No. I say you, personally, examined the temperature, yourself, in this plant every day between the 8th of February, [1603] 1943, and sometime in October? A. No, I did not say that.

(Testimony of Wilbur J. Mills.)

Q. Did you examine it at that time, at all?

A. Yes.

Q. How often did you examine the temperature?

A. I go through the warehouse frequently.

Q. In that period between February 8th and October 8th, we will say, how many times did you examine the temperature in your warehouse?

A. Probably 40 or 50 times.

Q. So on the 40 or 50 occasions you personally know what the temperature was?

A. That is from a personal observation.

Q. Yes.

Mr. Faulkner: I move the testimony of the witness of the uniform temperature be stricken out, your Honor, on the ground it was hearsay as to these defendants. He did not have any knowledge except on the occasions that he was there.

The Court: I will let the whole record stand regarding this testimony, and let the jury determine the fact.

Mr. Faulkner: And upon the further ground the testimony of the witness is not the best evidence of the temperature.

The Court: What is the best evidence?

Mr. Faulkner: The best evidence would be the charts which are in existence.

The Court: Are the charts available?

The Witness: Yes.

Mr. Faulkner: I will submit the motion, your Honor.

(Testimony of Wilbur J. Mills.)

The Court: Very well; if the charts are available they [1604] must be produced.

Mr. Pratt: We will have the charts, if the Court please.

Mr. Faulkner: What?

Mr. Pratt: We will have the charts.

The Court: Very well.

Mr. Faulkner: Then the testimony will go out, your Honor?

The Court: The testimony will remain in and will go out unless they produce the chart. I will allow the record to remain as it is at this time, on the assurance of counsel for the Government that they will produce the charts that you have inquired about, which are, after all, the best evidence.

Mr. Faulkner: An exception to the ruling, your Honor.

Q. Mr. Mills, what did you say these papers were?

A. They are copies of non-negotiable warehouse receipts.

Q. Is that a record of your company?

A. That is.

Q. Is it a carbon copy of a record—is the typing on that document that is printed——

A. No, sir. The warehouse receipt has certain stipulations and is a contract between the terminal and the other person. This is merely a copy showing what we received.

Q. This does not purport to be a warehouse receipt, does it?

A. No.

(Testimony of Wilbur J. Mills.)

Q. You have made a description. Did you prepare this document?

A. That is done through the office, regular channels.

Q. Did you have anything to do with its preparation? [1605]

A. Under my general supervision, yes. They were made under my general supervision.

Q. Do you remember directing anybody to prepare this particular document?

A. Not that particular document.

Q. You merely know it had been prepared?

A. Yes.

Q. This document here, Exhibit 123, that is a document prepared in your office, is it not?

A. Yes.

Q. That is entirely a record of your office?

A. That is correct.

Q. You testified yesterday that this document, No. 120, is the first record of any kind prepared by your company in relation to the eggs that are involved on this car sheet, is that right?

A. Yes.

Q. When these eggs came into your plant do you remember the eggs, yourself?

A. I have a recollection of them.

Q. What?

A. I do have a recollection of the matter after all this.

Q. Did you examine the eggs? A. No.

Q. When the eggs came into your plant you pre-

(Testimony of Wilbur J. Mills.)

pared a record called a car sheet, Terminal Refrigerating Company record. In this first record that you prepared, is there any indication on that record whether or not the eggs involved were processed or plain? A. No, sir.

Q. The records that came from the consignor, however, who shipped to you for the account of Nye & Nissen, have you any of their records?

A. No. [1606]

Q. Do you know how the consignor of those eggs described them in connection with that shipment, of your own knowledge?

A. My own knowledge would be gained from the car sheet. We were told the eggs were as described in the manner which we have listed them in the body of that car sheet.

Q. That is U. S. Exhibit 120? A. Yes.

Q. There is nothing on U. S. Exhibit 120 indicating whether the eggs were processed or fresh or plain? A. There is nothing on that.

Q. You, personally, did nothing in respect to those eggs to determine whether they were processed or not? A. No.

Q. Then how do you know whether they were plain eggs or processed eggs?

A. At that time there were no processed eggs coming in.

Q. How do you know, if you did not examine the eggs?

A. I don't know, if you want to put it that way, Mr. Faulkner.

(Testimony of Wilbur J. Mills.)

Q. In other words, you never did know, did you?

A. Except I was told somewhere along the line, I assume, they were plain. If they had been otherwise we would have been notified to that effect.

Q. You have set up the records of your company in order to protect your company in connection with the deterioration of the eggs; is that right?

A. No.

Q. Isn't it a fact it was to your benefit, the benefit of your company, to characterize any eggs that came into your [1607] place as a fresh egg, as distinguished from a processed egg, because you knew if anything deteriorated in your plant that it would more likely be the fresh egg, and the deterioration of a plain egg would be the fault of the shipper?

A. No. There would be no advantage to the Terminal Refrigerating Company to specify it either way.

Q. Your company is responsible for the sound keeping of eggs? A. Yes.

Q. You receive a fee for the refrigeration of those? A. Correct.

Q. A plain egg will deteriorate faster than a processed egg, isn't that right?

A. That is correct.

Q. So it was to your advantage wherever possible to indicate that the eggs in your plant were plain eggs? A. No, that is not correct.

Q. On what basis did you mark eggs on your

(Testimony of Wilbur J. Mills.)

records as plain eggs when you had no knowledge whatever of the type egg they were?

A. We generally have a pretty fair knowledge of what the eggs are.

Q. Where do you get it?

A. Usually from the consignee.

Q. From the consignee. Did you get it from the documents here?

A. It would be on the manifest figures, there.

Q. Where?

A. In the body of that car sheet. I think that is what you are asking, Mr. Faulkner.

Q. Here is a direction that is supposed to have been signed by Nye & Nissen in which your company describe the eggs. A. Yes. [1608]

Q. How did you describe them?

A. We described them as plain on that.

Q. Then how did you describe them in the paper signed by Nye & Nissen?

A. Eggs; that is customary. When eggs go into storage, and as far as ordering out of storage, they are eggs.

Q. At all events, when you had a document signed by the firm of Nye & Nissen, you did not describe them as plain eggs?

A. What was that?

Q. At the time you had a document prepared to be signed by Nye & Nissen you never described the eggs as plain eggs?

A. We did not describe them. It was prepared, that document, we would not describe——

(Testimony of Wilbur J. Mills.)

Q. If you had described them as plain eggs and Nye & Nissen claimed they were processed eggs, they wouldn't want that, you were describing them one way and they thought they were the other——

A. If they had told us that we described eggs as plain eggs and they were processed, we would naturally check it. That is quite easy to determine.

Q. You never checked the type of eggs that these were? A. At the time receipt?

Q. At any time? A. No, I did not.

Q. Nor have you any record showing that your company checked the type? A. No.

Q. The exhibit. I just showed you, this Exhibit 124, there is [1609] some writing on here—Mr. Pratt, that is not any part of the records of the Terminal Refrigerating Company?

Mr. Pratt: That's right. Do you want something pasted over it?

Mr. Faulkner: We can do that later. On this exhibit I notice there is writing that has nothing to do with Terminal.

Mr. Pratt: That's right.

Mr. Faulkner: Q. Now, Mr. Mills, do you keep processed eggs or plain eggs at the same temperature in your ice plant? A. Yes, we do.

Q. In other words, if a hundred cases of processed eggs came into your plant and a hundred cases of plain eggs came in, they would go in the same refrigerating room and be retained there at the same temperature? A. Yes.

Q. What is the difference, then, whether they

(Testimony of Wilbur J. Mills.)

are plain or processed, what is the difference to you?

A. The difference to us is that when eggs are stored plain or natural we have a feeling that they won't come out in the same condition that a processed egg would come out in, and we put ourselves on record.

Q. So when you put yourself on record in each instance where you do, it is always to your advantage to put yourself on record as storing plain eggs, isn't it?

A. No. On your warehouse receipt you stipulate usually that merchandise is subject to conditions. We could be wrong in some of the statements we make—— [1610]

Q. Is there any question in the world that it is to the advantage of your company to characterize the eggs as plain eggs?

A. There is no gain for the Terminal whether we classify them as plain or processed. I would state that definitely, Mr. Faulkner.

Q. Yet you do know that plain eggs are likely to come out in less fit condition than the processed eggs?

A. Yes, that is correct. Generally speaking, when eggs are stored plain, that is generally later in the year, or early parts of the year, and they are removed at a more rapid manner than processed eggs.

Q. In this instance a carload of eggs came in on two separate occasions and without any examina-

(Testimony of Wilbur J. Mills.)

tion being made you set up your records to show they were plain eggs? A. Correct.

Q. Without examination. There is reference, Mr. Mills, to these 105 cases of eggs that were the subject matter of Lot No. 3737, 25 cases you have testified came from this car sheet record.

A. Correct.

Q. Of 560 cases. Where did the other 80 cases come from?

A. The other 80 cases were delivered to us under dock number 242 from National Ice & Cold Storage Company at Los Angeles.

Q. Where are your records on that delivery?

A. I have only the record of the receipt of the 261 cases. I believe that is one. This is the same as the yellow ticket which was introduced yesterday.

Q. You say a yelow ticket. I don't follow you.

A. This is [1611] a copy. I think one of these has been introduced.

Q. In other words, the eggs which were set up on the record by you as plain eggs, when the record came to you of 80 of those cases from the National Ice & Cold Storage Company they did not describe them as plain eggs, did they?

A. I will have to look and tell you. No. They are specified as eggs.

Q. As eggs? A. Yes.

Mr. Faulkner: I ask this be marked in evidence your Honor, the record of the National Ice & Cold Storage Company, dated February 10, 1943.

The Court: Admitted and marked.

(Testimony of Wilbur J. Mills.)

(The document was marked Defendants' Exhibit AF in evidence.)

Mr. Faulkner: Q. Now, at the time of the delivery of these eggs to your company they were delivered by the Midnight Motor Express, were they not?

A. I think it is marked M. & N., is it not?

Q. Midnight Motor Express. A. Yes.

Q. When the Midnight Motor Express described the merchandise delivered to you how did they describe the eggs? A. 261 cases of eggs.

Mr. Faulkner: May the Midnight Motor Express record be marked part of this exhibit AF-1? Will you clamp them together?

The Court: Admitted and marked.

(Documents marked Defendants' Exhibit AF-1 in evidence.) [1612]

Q. Mr. Mills, it is the practice in your company, is it, to mark all lots of eggs by a stencil mark on the end, is that right? A. That is correct.

Q. Is that the general practice of other storage companies? A. The warehouses do that.

Q. Will you look at this box, please?

A. Surely.

Q. Is there any marking on that box saying it was ever in the National Ice & Cold Storage Company?

A. No, there is not. National uses a different form of lot number.

The Court: Speak louder, please. What is it?

(Testimony of Wilbur J. Mills.)

The Witness: I am sorry. The National uses a different form of lot numbers, and the eggs are not lotted until they are placed in storage. The 2424 we have used here was a big lot. It was placed probably on one case on the load fo identification purposes only. In storage items every package is marked.

Q. Doesn't the National mark in stencil the same as your company?

A. They use a different form. They use a D, or A, B, C and D, plus three figures.

Q. At all events, they marked the case in stencil? A. That is right.

Q. And there is no National Ice & Cold Storage mark on this case? A. That is correct.

Q. Mr. Mills, you described some paper here which showed a delivery, a shipment of Lot 3737 to the firm of Nye & Nissen? [1613] A. Yes.

Q. Have you any receipt signed by Nye & Nissen showing the delivery?

A. Showing the delivery?

Q. Showing the receipt, rather, after the delivery?

A. After the merchandise left our possession?

Q. Yes. Have you in the records——

A. We are only interested in getting authorization to deliver to a party, and in this case we have the authorization authorizing us to deliver to the California Freight Service and their signature.

Q. Now, that is dated October 14, 1943?

A. That is the authorization, that is correct.

(Testimony of Wilbur J. Mills.)

Q. When were those shipped?

A. They were shipped on the 15th.

Q. How do you know that?

A. By the——

Q. Show me what you base that on?

A. This form.

Q. That is dated October 14.

A. It is dated—that is correct.

Q. How do you know the date they were shipped? A. The time stamp.

Q. Whose time stamp is that?

A. That is ours.

Mr. Pratt: This is referring to Exhibit 125.

Mr. Faulkner: All right, Exhibit 125, yes.

Q. In other words, your company made out—what is that document, Exhibit 125?

A. That is a delivery ticket, we term it.

Q. Now, you made out a delivery ticket on October 14, 1943, is [1614] that right?

A. That is correct.

Q. Who did you deliver it to?

A. The California Freight Lines.

Q. You say up here there is a date, October 15, which is part of your records, is that right?

A. That is correct.

Q. What did that date represent on that particular paper?

A. At the time the truckman came in, before he was given that order, this ticket was time stamped.

Q. The fact is, however, the paper that the

(Testimony of Wilbur J. Mills.)

truckman signed was the receipt of the eggs on the 14th of October, isn't that correct?

A. It is not a receipt, no sir.

Q. Who is J. Cook?

A. J. Cook is a driver for the California Freight Lines.

Q. California Freight Lines had a paper signed by Mr. Cook which acknowledges receipt on the 14th of October of 105 cases of eggs, isn't that correct?

A. The order would be made up on the 14th. It was delivered on the 15th.

Q. Mr. Mills, Mr. Cook signed a receipt of those eggs on a receipt that was dated October 14, 1943, didn't he? A. That is right.

Q. Isn't that right? A. Yes sir.

Q. Now, you personally were not there when Mr. Cook came and got the eggs, were you?

A. I wouldn't know that.

Q. Have you any record there from the shipping company?

Q. I just have the bill of lading. [1615]

Q. Who prepared the bill of lading?

Mr. Pratt: May the witness take the witness chair again?

Mr. Faulkner: It is pretty hard to show him the document and ask him about it. But Mr. Pratt would like you to return to the witness stand.

The Witness: All right, whatever he wishes.

Mr. Faulkner: Q. Who prepared the bill of lading, U. S. Exhibit No. 126?

(Testimony of Wilbur J. Mills.)

A. One of our employees.

Q. Pardon me?

A. One of the employees of the Terminal Refrigerating Company.

Q. That is your company? A. Yes sir.

Q. That is prepared by you?

A. That is correct.

Q. This is not a record of the freight company; that is a record you had?

A. That is our record signed by the freight lines, that is correct.

Q. What do you do with that after you prepare it? A. After this is prepared?

Q. Yes.

A. We give the No. 2 copy to the truck lines and that constitutes part of their deal, I believe.

Q. You what?

A. We give the No. 2 copy—it is made up in triplicate—the No. 2 copy is given to the truck line and becomes a part of their records.

Q. And what else? In other words, this is made in several copies? A. Three copies, right.

Q. Three copies? A. Yes sir. [1616]

Q. The original is retained by you?

A. That is right.

Q. A copy to the truck line, and does a copy go to the consignee? A. No, not always.

Q. Now, what is this exhibit here, U. S. Exhibit 122, supposed to be?

A. That is the beginning of the storage operation. In other words, this thing is made up in

(Testimony of Wilbur J. Mills.)

copies of three, and starts the process of getting eggs into storage.

Q. And is that made shortly after the car sheet record is made up?

A. It would be made up at any time we were instructed as to just what the customer's wishes were with reference to those eggs.

Q. At the time your company prepares that record how did they describe those eggs?

A. Medium eggs.

Q. That relates to the 25 cases that came out of the eggs described in the car shipment consisting of 560 cases of eggs? A. That is right.

Q. Now, this record, Exhibit No. 121, is a record of Lot No. 3737 and the figure 60, which has been corrected to 80. Are those part of the 105 cases of eggs that have been referred to in these other documents? A. In the 3737 there.

Q. And that was made in the early stages of creating that lot number? A. That is right.

Q. Is that right? A. Yes sir.

Q. How did you describe the eggs in that document? A. As Mediums. [1617]

Q. What? A. Mediums.

Q. What happens after you make this record? Do you send counterparts to the firm of Nye & Nissen?

A. No. From those tickets the booking is performed, and from the books the warehouse receipts are made.

Q. The warehouse receipt? A. Yes sir.

(Testimony of Wilbur J. Mills.)

Q. And so that with this document before someone in your plant, dated February 11, describing 25 cases of Medium eggs, and this document, dated February 10, describing 80 cases of Medium eggs, someone in your plant prepared a warehouse receipt from these two documents and then put down 25 cases of Plain Medium eggs and 70 cases of Plain Medium eggs, and then 10 cases of Plain Medium eggs, is that correct?

A. That would be correct. The someone in this case would be myself, I believe.

Q. That is the way it was done?

A. Yes sir.

Q. Mr. Mills, when was the first time that you saw this box right here in court?

A. I saw that box yesterday afternoon.

Q. What? A. Yesterday afternoon.

Q. Who showed it to you?

A. This group at this table.

Q. I know, but which one?

Let him answer, Mr. Pratt. Your Honor, he is trying to get on the witness stand, and I wish he would.

Mr. Faulkner: Q. Just tell me who showed you the box? A. Mr. Pratt. [1618]

Q. And who else was present? Was Mr. Hippeli there? A. No.

Q. Was Mr. Houck?

A. I think he was, yes.

Q. Was the man next to the inspector there—I mean, the Colonel?

(Testimony of Wilbur J. Mills.)

A. No, the Colonel wasn't there.

Q. Was the Colonel there? A. No sir.

Q. Was the man next to the Colonel there?

A. I am not sure, to be frank with you.

Q. Was the man in back of Mr. Houck there?

A. Yes, he was.

Mr. Faulkner: That is all. That is your record (handing a document to the witness).

Redirect Examination

Mr. Pratt: Q. Keep your seat there, Mr. Mills. Something was said about the record of the temperature there where these eggs were stored in your warehouse. Do you have separate rooms or chambers for the storage of different products?

A. That is correct.

Q. Do you have a record showing the temperature of each of these chambers?

A. Yes, we do.

Q. And how is that? In what form is that?

A. There is a log made up each day, which is a manual operation. At that time I think we were taking temperatures six times a day through a temperature man, and there are clocks set in each room which records a temperature for one week, day by day.

Q. You mean for every minute of the day?

A. Yes sir.

Q. Now, the record of that period from February to October, 1943, [1619] would occupy how many pieces of paper or books?

A. Well, there would be a log for each day, and

(Testimony of Wilbur J. Mills.)

there would be the charts for one week. That would be approximately ten months. Probably thirty-five of those, I guess, February until October.

Q. It is a loose-leaf record, is it?

A. That is right.

Mr. Pratt: I am trying to figure some way to get those records in this court in order to satisfy the records in the case without encumbering unnecessarily the record.

Mr. Faulkner: I told you over and over again. You get some impression that they can testify to something they have no more knowledge about than the man in the moon.

Mr. Pratt: Q. Who is in charge of that record, Mr. Mills?

A. The log is prepared by our engine room department and comes up to the office each day, that is, on the daily deal; on the weekly deal, they are brought up at the end of each week.

Q. Does the weekly report show the temperature for every day in this particular room where these were stored?

A. That is, the clock charts do, yes. They are on a circular basis. Any real fluctuation in temperature, of course, shows up there.

Q. Who knows about the manner in which these records are kept and can bring them here?

A. Our engineers know about them.

Q. I will inquire of you later about that off the record. Now, in connection with the statements that you have in some of these records that these

(Testimony of Wilbur J. Mills.)

were plain eggs, you have said that you did not personally check the eggs to determine whether they [1620] were plain or processed; that is true, is it not? A. That is correct.

Q. Who did, if you know?

A. In our organization?

Q. Yes?

A. I don't know. We would either be informed or would have knowledge thereof that they were plain.

Q. From what source?

A. Could be from the agent. Generally we are told what is in a car, and that is one of the first questions you ask, whether they are plain or processed; also the time of the year.

Mr. Faulkner: I object to all this as hearsay, what someone might do.

Mr. Pratt: I am trying to find out the source of his information.

Mr. Faulkner: We are not bound by the source.

Mr. Pratt: Perhaps you are.

Mr. Faulkner: The witness on direct examination describes these eggs as plain. On cross examination we developed that he does not know whether they are plain, white, yellow, black or anything. He has never seen the eggs.

Mr. Pratt: I am trying to develop where the information comes from.

Mr. Faulkner: He hasn't the right to inquire the source of the information because it is hearsay. He is developing hearsay.

(Testimony of Wilbur J. Mills.)

Mr. Pratt: Perhaps it is not hearsay. [1621]

Mr. Faulkner: Well, it is when this witness was not there. The quality of these eggs at the time they went into that plant can only be established by an examination of the eggs.

The Court: Read the question.

(The last question was read.)

The Court: Q. What source, if you know, did this information come from?

Mr. Faulkner: That is——

The Court: Very well, the Court has addressed that question to the witness.

Mr. Faulkner: I object to the Court's question upon the ground the witness has testified that he has never examined the eggs and does not know of his own knowledge the quality and the source from which he gave testimony, definite in character, is not binding upon the defendant.

Mr. Pratt: It may be.

The Court: Read the question the Court addressed to the witness.

Mr. Faulkner: Exception to your Honor's direction to the witness to answer the question.

The Court: You may answer.

(Question read.)

A. The answer I would give would be that we would be instructed by the party shipping the merchandise to us that they were plain. [1622]

Mr. Pratt: Q. And who was the consignor of the product?

Mr. Faulkner: The same objection.

(Testimony of Wilbur J. Mills.)

A. Nye & Nissen.

Mr. Faulkner: Just a moment. Now I renew my motion to strike all of this testimony out, your Honor, because that can't bind the defendant. That is not evidence.

The Court: What is not evidence?

Mr. Faulkner: The fact that somebody——

The Court: Read the question and answer.

Mr. Faulkner: He said——

The Court: Will you read the question and answer?

(The last two questions and answers were read by the reporter.)

The Court: The questions and answers may stand. Note your objection. The objection will be overruled. Let us proceed, gentlemen.

Mr. Faulkner: Very well. Exception.

Mr. Pratt: Q. Mr. Mills, you have identified these warehouse receipts, Exhibits 127 and 128, and I think you testified that the originals of these warehouse receipts went to Nye & Nissen, is that right? A. That is correct.

Q. How did they go to Nye & Nissen?

A. They would be mailed.

Q. To San Francisco or to Los Angeles? Do you know that?

A. I wouldn't want to state that. Either one of the two places, but I can't make a definite statement on that. [1623]

Q. These describe the products placed in storage as Plain, Medium eggs. I will ask whether the

(Testimony of Wilbur J. Mills.)

company, Nye & Nissen, ever, to your knowledge, made any complaint of any sort to the description of these eggs as Plain Medium eggs?

Mr. Faulkner: Your Honor, they have not shown that any defendant in this case had any knowledge of the contents of this document.

Mr. Pratt: Nye & Nissen are a defendant in this case, the corporation.

Mr. Faulkner: But you can't charge the defendant in a criminal case with a record that may have been given to a clerk in Los Angeles, and then expect them to be bound in a criminal case by the failure of the clerk to act, because a company is not bound by the acts of employees in that way.

The Court: Let the record stand, gentlemen, as it is. We will proceed.

Mr. Faulkner: Exception.

Mr. Pratt: Q. Mr. Mills, in regard to the markings on this egg case, you have stated that the other company, the National Ice and Cold Storage Company, had a different system of marking packages in storage, is that right?

A. That is right.

Q. As to your company, when does the marking go on the package? A. Prior to storage.

Q. How long prior to storage?

A. Immediately on receipt of [1624] the merchandise or on the giving of an order to us to store merchandise, the men on the dock are instructed to lot merchandise in a manner set up in the office, and it goes on at once.

(Testimony of Wilbur J. Mills.)

Q. The marking goes on at once. Do you know whether these packages, any of them, were actually in storage at the National Ice and Cold Storage Company?

A. No, I wouldn't have any knowledge of that.

Q. Would you happen to know when they put markings on packages that go into their storage?

A. They would do it in the same manner as we would, I believe.

Q. How many of these packages came from National Ice and Cold Storage Company in this Lot 3737? A. 80 cases.

Q. And the other 25 came direct to you, did they?

A. That is correct. They were received by ice car.

Mr. Pratt: I think that is all.

Recross Examination

Mr. Faulkner: Q. Mr. Mills, did I understand you to say that the consignor of these eggs had actually advised you, that the firm of Nye & Nissen advised you, Mr. Mills, that these were plain eggs?

A. I would presume they did, yes, sir.

Q. Did they?

A. I would presume they did.

Q. I am asking you if you have a distinct recollection, not a presumption or an assumption. Did the firm of Nye & Nissen [1625] tell you that these were plain eggs?

A. I have no distinct recollection. I merely presume they did.

(Testimony of Wilbur J. Mills.)

Q. You merely presume that?

A. That is right. That is a natural thing to do before merchandise goes into storage.

Mr. Faulkner: I move the sentence go out.

The Court: What he presumed may go out. Let the Jury disregard it.

Mr. Faulkner: I ask that the answers given on redirect examination to Mr. Pratt on the subject matter of where the information came from, as to the source of the word "plain," go out, because it was an assumption. I move to strike it out.

The Court: I will allow the other questions and answers to stand.

Mr. Faulkner: Q. The real consignor of this merchandise was the shipper in the east, wasn't it?

A. Yes, sir, I think so.

Q. So in reality the consignor of the merchandise that came in your plant was not Nye & Nissen, was it?

A. The car was consigned to us by Nye & Nissen. I have no knowledge where the merchandise was bought or anything else. Our first information comes from Nye & Nissen. That is their car on our records.

Q. The information that you got then from Nye & Nissen was entered on this sheet, is that right?

A. That is correct.

Q. So at the time you entered information concerning this merchandise, this carload of 560 cases of eggs, you received this [1626] information from Nye & Nissen, is that right?

(Testimony of Wilbur J. Mills.)

A. That is correct.

Q. And in respect to those eggs, the information you received from the firm of Nye & Nissen was that there were 70 cases of Henries, is that right?

A. I think that is the figure set down.

Q. 204 cases A eggs, is that right?

A. That is right.

Q. And the firm of Nye & Nissen advised you that there were 26 cases of Mediums, isn't that right? A. That is correct.

Q. So that, the information that you recorded at the time you got it from the firm of Nye & Nissen was that you got 26 cases of Medium eggs, isn't that right? A. That is right.

Q. And that was made right at the time of the information being conveyed to you by the consignor of what the goods were, isn't that right?

A. Nye & Nissen—you have reference to Nye & Nissen.

Q. Nye & Nissen. A. That is right.

Q. This information came from Nye & Nissen?

A. That is correct.

Q. Right at the time you were getting the eggs into your plant? A. Right.

Q. And it was written down right at that time?

A. That is correct.

Mr. Faulkner: That is all. [1627]

Further Redirect Examination

Mr. Pratt: Q. Do you know of any other information that came from Nye & Nissen in connection with the character of the eggs? I withdraw

(Testimony of Wilbur J. Mills.)

that. Do you know whether any other information came from Nye & Nissen on the subject of the character of the eggs?

A. No, except that they would undoubtedly tell us that they were plain eggs.

Mr. Faulkner: I ask that go out as no responsive.

The Court: It may go out. The Jury will disregard it.

Mr. Pratt: That is all.

The Court: We will take a recess.

(Recess.) [1628]

R. B. TILLETT,

called as a witness for the Government; sworn.

Direct Examination

Mr. Pratt: Q. I think your name is R. B. Tillett? A. Yes.

Q. How do you spell your last name?

A. T-i-l-l-e-t-t.

Q. Your home is in Los Angeles, is it not?

A. That's right.

Q. Your occupation? A. Dispatcher.

Q. For what company?

A. For California Drayage.

Q. In 1943——

Mr. Faulkner: I did not hear the answer.

(The answer was read by the reporter.)

(Testimony of R. B. Tillett.)

Mr. Pratt: California Drayage Company. In October, 1943, with what company were you connected?

A. It was California Freight Lines.

Q. You say you were a dispatcher for that company at that time, were you? A. Yes.

Q. What are the duties of a dispatcher?

A. Well, my duties are to take the phone calls, if a shipper phones in for a pickup, and we are supposed to send a man to pick it up. When he does pick it up and to make make the bill, figure the truck that goes for it, and make a manifest for it.

Q. You take care of the records of the shipment, do you?

A. Until it gets on the truck.

Q. The California Freight Lines was a trucking company, was [1629] it not.

A. Correct.

Q. Operating, among other places, between Los Angeles and San Francisco? A. Yes.

Q. I call your attention to Exhibit No. 126 in evidence, which is entitled, "Uniform Straight Bill of Lading, Terminal Refrigerating Company, to California Freight Lines," for the shipment of 105 cases of eggs to Nye & Nissen at San Francisco. Are you familiar with that particular paper?

A. I am familiar—about all I am familiar with is this signature.

Q. I hand you now another paper which appears to be a carbon copy of Exhibit 126, and I will ask

(Testimony of R. B. Tillett.)

whether that paper comes from the regular records of the California Freight Lines.

A. This one does.

Q. Yes. A. Yes.

Q. The other is a carbon copy, is that right?

A. Yes, No. 2 copy.

Q. Now, I direct your attention to the signature at the bottom of Exhibit 126 and also to the signature on the carbon copy, which apparently is a carbon copy of the signature which reads, "California Freight Lines, J. Cook." Who is J. Cook, if you know?

A. He is one of the men, he is one of the truckmen, we call them.

Q. One of your truck drivers at that time?

A. Yes.

Q. Is he still working for your present company? A. Yes.

Q. You recognize his signature on that paper?

A. Yes, I would [1630] say that was his.

Q. The signature on that paper is his signature for the merchandise described in the paper, isn't it?

Mr. Faulkner: No, it is not.

The Witness: No.

Mr. Faulkner: You just introduced his receipt. It is over here, Mr. Pratt. Here is his receipt.

Mr. Pratt: Oh, yes.

Q. Well, I direct your attention to Exhibit 125, which is in evidence, and is as follows: "Original —Terminal Refrigerating Company—Wholesale Terminal, Los Angeles. California Freight Lines.

(Testimony of R. B. Tillett.)

October 14th. Deliver to Nye & Nissen, San Francisco, 105 cases of eggs, Lot 3737," with the signature at the bottom of that paper, "J. Cook." Is that this same man, the signature of your truck driver?

A. That is the same man.

Q. That shows that Mr. Cook receipted for these 105 cases of eggs? A. Yes.

Q. To the Terminal Refrigerating Company?

A. Correct.

Q. Now, I direct your attention to another paper, "Freight Bill, California Freight Lines. Shipper, Nye & Nissen. Consignee, Nye & Nissen, San Francisco." I will ask you if you can identify that paper. A. Yes, I made this bill.

Q. You made that bill; is that in your handwriting? A. That's right.

Q. Does that come from the original records of the California [1631] Freight Lines?

A. That's right.

Q. Now, I notice in the middle of this paper in pencil some handwriting. Do you identify that?

A. Well, I cannot identify it. It is a signature, what we call the signature copy, proving that he delivered this copy.

Q. Showing that the shipment was delivered to Nye & Nissen at San Francisco? A. Right.

Mr. Pratt: I offer this in evidence, this freight bill.

Mr. Faulkner: Same objection, your Honor, as made to other documents and relating to these par-

(Testimony of R. B. Tillett.)

ticular eggs that were introduced yesterday and today.

The Court: Overruled. Let it be admitted and marked.

(The document was marked U. S. Exhibit 130 in evidence.)

Mr. Faulkner: Exception.

Mr. Pratt: Q. Now, this paper in evidence, that is the bill rendered, or your copy of the bill rendered to Nye & Nissen for the hauling of this freight from San Francisco, or, rather, from Los Angeles to San Francisco, is it?

A. Yes.

Q. Calling your attention to this Exhibit 125, the receipt of your company given to the Terminal Refrigerating Company, can you state by examining that paper the date when your company received that freight from the terminal?

A. Well, I never saw this paper before: this paper, here.

Q. I observe that this paper has a date—Well, I will withdraw that. You say you never saw this paper before? [1632]

A. No, not that one.

Mr. Pratt: I would like to read this paper to the jury. This is Exhibit No. 130: "Freight Bill. California Freight Lines. Contract Carriers. Los Angeles.

"Point of Origin, Los Angeles. Shipper, Nye & Nissen. Consignee, Nye & Nissen, San Francisco. Date, 10/14/43. 105 cases of eggs. Weight 5565,"

(Testimony of R. B. Tillett.)

and the rate of charge is 69 cents and the total is $38.40, and in the middle in pencil, "R. J. Goddard, 105 cases."

That is all.

Mr. Faulkner: That is all; no questions.

HOMER G. FOSTER,

called as a witness for the Government; sworn.

The Clerk: Will you state your name?

A. Homer G. Foster.

Direct Examination

Mr. Houck: Q. Mr. Foster, have you ever worked on the steamship William S. Clark?

A. I did.

Q. When did you first board that ship?

A. On the 27th day of October, 1943.

Q. What were your duties?

A. I was hired, or sent out, rather, of the Union Hall as a night cook and baker.

Q. When did you first start cooking?

A. I started to work on the 28th, the following day.

Q. Did you have any occasion to use any eggs on that day? [1633]

A. I did. No, not that day; the following day I did.

Q. That would be what day?

A. That was the 29th.

(Testimony of Homer G. Foster)

Q. Of October? A. Yes.

Q. 1943? A. Yes.

Q. Where did you get these eggs?

A. Out of the chill box on the ship.

Q. Did you get them personally?

A. I did.

Q. About what time in the morning was that?

A. Around nine or ten o'clock.

Q. And what did you have to do down there to get the eggs?

A. I had to break open a case and take them out of that in a pail; I had a bucket with me.

Q. Did you observe the condition of the chill box at that time? A. I did.

Q. What was that condition?

A. I would say it was in good condition.

Mr. Faulkner: We object, not the best evidence, the condition of the chill box.

Mr. Houck: He can certainly testify, your Honor, it was clean, dry. That is the type of condition. I am not going to ask him what the temperature was.

Mr. Faulkner: Well, I will submit the objection.

The Court: Overruled.

Mr. Faulkner: Exception.

Mr. Houck: Q. What did you observe about this ice box? [1634]

Well, everything was placed in there neatly; whoever had put the stores away had placed them all right.

Q. Was it clean?

(Testimony of Homer G. Foster)

A. Yes, I would say it was.

Q. Was there any moisture on the floor that you observed? A. Not that I noticed, no.

Q. How were the eggs stacked in the icebox?

A. Well, they were placed to one side in a group. All the cases were stacked on top of the others.

Q. Were they on the floor?

A. Some were, yes.

Q. This case that you opened, you say you broke the cover? A. I broke the cover.

Q. Did you observe any markings on this case?

A. I saw on some of the cases the name "Nye & Nissen."

Q. How was it placed on there?

A. It was on the end of the case, stamped on indelible, I imagine some kind of indelible stamp.

Q. Can you state about how many cases you observed that on?

A. Four or five that were in the front, I imagine, of the stack.

Q. What did you do when you broken open this case, what did you do then?

A. I took the filler out.

Q. You took some loose eggs out of the case and put them in your pail? A. Yes.

Q. About how many?

A. I would say about four dozen.

Q. Where did you take them?

A. Upstairs to the galley.

Q. What did you do with them there?

(Testimony of Homer G. Foster)

A. I proceeded to [1635] break them. I was going to use them in cooking—baking, rather.

Q. What did you find?

A. I found the eggs were rather bad, the yolks were—wouldn't stand up. We use the expression——

Mr. Faulkner: We object, the same objection to the effort to prove the condition of eggs that were delivered in the early part of October by some relation with the eggs several weeks later in the latter part of October.

The Court: That goes to the weight of the testimony. Overruled.

Mr. Faulkner: Exception. That is the same objection we made fully and discussed with your Honor.

The Court: Yes.

Mr. Houck: Q. Tell us about these eggs you broke.

A. Well, when I broke the eggs the yolks would break also.

Q. How would you break it?

A. You crack the egg on the side, like that.

Q. About how far would it drop?

A. Four or five inches.

Q. What do you mean when you say the yolks would break?

A. Immediately the yolks would run into the whites.

Q. What else did you observe about these eggs?

A. After I broke several of them I found one

(Testimony of Homer G. Foster)

in which there was some spot on it, rather like it was fermented or rotten to some degree. It had a very strong odor.

Q. Can you describe that odor?

A. Well, very foul. I would [1636] say the egg was rotten, myself.

Q. Did you observe anything on the outside of these eggs? A. Not a thing, no.

Q. Anything more about the eggs than you have told us already?

A. Well, after breaking several of them and finding the yolks wouldn't stand up, I was breaking them into a pan, so I went and got myself a dish and broke the eggs into it so if I did find good ones they wouldn't be mixed with the bad ones. They ran so bad that I went down and broke open another case and got more eggs, and they also were about the same way. Then I made a complaint to the chief cook.

Q. Before that, what did you notice about the condition of these eggs, if anything?

A. Just watery, I would say.

Q. Did you notice any moss or fuzz on the eggs?

A. On the inside of the shells, yes.

Q. Inside of the shells? A. Yes.

Q. You say you had four dozen or so. How many of these eggs were good eggs?

A. I would say possibly two or three out of a dozen; no more than that.

Q. Then what did you do?

A. I went to the chief cook and told him about

(Testimony of Homer G. Foster)

it. Of course, we went to the steward and made the complaint.

Q. What is the steward's name?

A. Albert Oliver.

Q. What did you and the steward do, if anything?

A. We went below deck into the chill box and got some more eggs out. [1637]

Q. Where did you get them?

A. From the same case we had been using, and brought them out.

Q. How many cases did you actually take eggs out of?

A. I took eggs out of two before I went with him downstairs. When we found these eggs bad we went and picked the cases at random in the lot and opened them up.

Q. About how many did you open up altogether?

A. Possibly four or five.

Q. What did you do with the eggs you picked out of these cases?

A. We went upstairs and broke them and found them in the same condition as the first.

Q. About how many of those would be good, or were good?

A. I would say three, possibly three or four to a dozen.

Q. Three or four to a dozen? A. Yes.

Q. Did you observe any inspection of these eggs other than the inspection you have described?

A. Observe what?

(Testimony of Homer G. Foster)

Q. Did you observe anyone inspecting these eggs at a later date? A. Yes.

Q. When was that?

A. I would say about two days after this happened.

Q. Where?

A. On the ship. In front of the galley there is a sink, and over it a drainboard, and these men were on board with some little gadget that had a light, I imagine it was an egg-candling device.

Q. How many men were there?

A. Two at one time, and the [1638] other time I don't remember; I think it was just one.

Q. How many cases of eggs did they have before them?

A. They went down and got eggs out of these cases and brought them upstairs.

Q. About how many cases did they break open?

A. At one time I would say six or seven cases broke open there.

Q. Did you see what type of inspection they made of the eggs?

A. Only that they held them up to the light before they broke them.

Q. Did you observe these eggs being taken off the ship? A. Yes, I did.

Q. When was that with relation to these other events?

A. I should say a day or two after these men were aboard.

Q. Were they all taken off?

(Testimony of Homer G. Foster)

A. Yes; I am quite sure they were.

Q. Did you have further eggs shipped on board?

A. Yes.

Q. When were they put on board?

A. I think the eggs were brought at the same time the others were taken off; probably later on the same day.

Q. Did you have occasion to use butter in your cooking? A. Yes.

Q. What condition was the butter in?

A. Well, it was rancid, strong.

Q. Where did you get the butter from?

A. Out of the dairy box, a separate box altogether from the chill box.

Q. That is a big box?

A. Yes, on the port side of the ship as you enter below deck, there is a dairy box on one side and [1639] then the chill box. You go through the chill box to what is known as the sharp box.

Q. Did you have occasion to use other products from the dairy box?

A. No, there wouldn't be anything outside of milk in there.

Q. How about the chill box?

A. Yes, there were other things in the chill box.

Q. Did you use other products from the chill box? A. Yes.

Q. In what condition were those products?

A. In good condition.

Mr. Faulkner: We object to that as incompetent, irrelevant, and immaterial, what the condition

(Testimony of Homer G. Foster)

of a carrot was. That wouldn't have anything to do with this case. Carrots, cabbages and vegetables in the icebox——

Mr. Houck: I understood your objection is the chill box was not maintained at a proper temperature and the eggs——

Mr. Faulkner: You put a witness on the stand—they put a witness on the stand who said the chill box was out of order during that voyage, and the eggs were——

Mr. Houck: For a few minutes on one occasion.

Mr. Faulkner: I beg your pardon. He said it was out of order on several occasions.

Mr. Houck: He testified not more than a few minutes at a time. Well, in any event, if that is their contention, your Honor, I think the witness should be able to testify that [1640] the other foods in the same box were in good condition.

Mr. Faulkner: Your Honor, the condition of a carrot after ten days in a chill box certainly hasn't anything to do with the condition of an egg, because, your Honor, Colonel Hand, and also all these men——

The Court: Read the question and the answer.

(The record was read.)

The Court: The question and the answer may stand.

Mr. Faulkner: Exception.

Mr. Houck: Q. You say the butter was in the dairy box? A. Yes.

(Testimony of Homer G. Foster)

Q. What other products are kept in the dairy box? A. Milk.

Q. Did you have occasion to use the milk?

A. Yes.

Q. What condition was the milk in?

A. Sweet.

Mr. Faulkner: Same objection.

The Court: The question and the answer will stand. Objection overruled.

Mr. Faulkner: Exception.

Mr. Houck: What was the answer?

A. Sweet.

Cross Examination

Mr. Faulkner: Q. Mr. Foster, when did you get on the William Clark?

A. I went on on a Wednesday afternoon, about 14.30. I was sent up by the union.

Q. What month? A. October.

Q. What date in October? A. 27th. [1641]

Q. Where did you get the ship?

A. At Pier 143 or 45 in Wilmington.

Q. In Wilmington? A. That's right.

Q. Was that your first appearance on that vessel? A. On that particular vessel, yes.

Q. Do you know Mr. Brown?

A. I didn't know him prior to that time.

Q. You knew him then?

A. I met him while aboard ship.

Q. You worked with him from then on?

A. I d d. I made the voyage.

(Testimony of Homer G. Foster)

Q. Who was the cook, you or Mr. Brown?

A. He was the chief cook. I was the night cook and baker.

Q. You were the night cook and baker?

A. Yes, sir.

Q. When you got on board that ship you went and started to use some eggs, is that right?

A. The following day, yes.

Q. You observed that the eggs were not very good, is that right? A. That's right.

Q. You testified you went to get some eggs. Did you anticipate you were going to get good eggs when you got them?

A. I though the eggs should be good.

Q. When you got them you assumed then that you would get good eggs, that is right, isn't it?

A. I would say so.

Q. When you got the eggs you started to break them and then they weren't very good?

A. Yes.

Q. Did they have any mold on them?

A. On the inside of the [1642] shell, on some of them, yes.

Q. Do you know——

A. They had a black appearance.

Q. I am talking about mold. Did the eggs have mold?

A. Well, what do you classify as mold?

Q. A kind of fuzzy substance on the shell of the egg?

A. Outside or inside?

(Testimony of Homer G. Foster)

Q. Outside. A. I didn't see any.

Q. Did the eggs you handled have the external appearance of good eggs?

A. Yes, I would say they did.

Q. Did the eggs you handled have the appearance that caused you at any time to wipe the shell off? A. No.

Q. How long did you use the eggs?

A. How long? I broke them at that time.

Q. How long were those eggs being used before they were removed from the ship?

A. Well, I would say two days after the complaint was made the eggs were removed from the ship.

Q. How long did you use eggs before that complaint was made?

A. Immediately after finding them in that condition I went to the chief cook and steward.

Q. That would be about the 27th or 29th of October, is that right?

A. Yes. On the 27th or the 28th, either one of those dates.

Q. On the 29th you made a complaint to the cook?

A. I said I did on the 27th or 28th.

Q. After you got on, within a day or two?

A. Yes, sir. [1543]

Q. You made a complaint about the condition of those eggs to whom?

A. To the chief cook and the steward.

(Testimony of Homer G. Foster)

Q. To the chief cook and the steward. Then what did the steward do?

A. He went below deck with me and we got some more eggs and brought them up and broke them.

Q. The steward wanted to know what those eggs were like?

A. Yes. The complaint wouldn't be any good if he didn't check on it.

Q. When that complaint reached the steward, why, he wanted to see the eggs? A. Yes.

Q. You went down and got some eggs?

A. Him and I went down together.

Q. Did you show him where the eggs were?

A. Why, he knew where the eggs were.

Q. Did you get some eggs out for him?

A. Well, I assisted him, helped him in shifting the cases around.

Q. These cases that you saw these eggs in, I understand they had the name "Nye & Nissen" on them?

A. That's right, some of them, as far as I seen.

Mr. Faulkner: Have you got some of those labels? [1644]

Q. Did they have labels on the end?

A. No, I didn't notice any labels. I noticed a stamp of Nye & Nissen.

Q. The stamp of the firm of Nye & Nissen?

A. That is right.

Q. Will you come down here and look at this box, Mr. Foster? Does this look like the box of any of the eggs that you opened?

(Testimony of Homer G. Foster)

A. Well, egg cases run practically the same all over. One egg case wouldn't be any different.

Q. Taking this box, where was the name "Nye & Nissen" stamped?

A. On the end I saw it, on one of the ends.

Q. Where the word "Medium" is?

A. Not necessarily where the word "Medium" is.

Q. No, but I mean on this end, on the end as distinguished from the side. A. That is right.

Q. And when I say the end, I mean the word "Medium" is printed here, and it would be on an end like that or the opposite end of this where you saw the name "Nye & Nissen" stenciled on there?

A. That is right.

Q. Did you see anything else stenciled on the case.

A. No, not that I noticed.

Q. Did you see any numbers on the cases?

A. No, I didn't pay any attention.

The Court: Just a moment. Come back on the stand.

The Witness: Thank you.

Mr. Faulkner: Q. Mr. Foster, how many cases of eggs did [1645] you see in the chill box——

A. I didn't count them. I would say about 35 or 40.

Q. Wait a minute. Let me start again. When you first came aboard the ship and made your first appearance in the chill box, about how many cases of eggs did you see in there?

(Testimony of Homer G. Foster)

A. Well, roughly—I wouldn't know—I would say about 35 or 40.

Q. Did you notice that they all had the name of Nye & Nissen on?

A. No, I didn't, only those that I handled.

Q. In other words, every case that you handled had the——

A. I wouldn't say every case. I did notice it on some.

Q. How many cases did you handle altogether?

A. Well, I didn't count them.

Q. You took how many up to the steward?

A. Took how many what? Eggs or cases?

Q. Cases.

A. We pulled one or two cases upstairs.

Q. Pardon me?

A. We taken one or two cases upstairs, after the first eggs were taken out of the icebox.

Q. How many cases did you take eggs out of prior to that time? A. A couple.

Q. A couple? A. Yes.

Q. How many eggs would you use as the night cook and baker on that ship?

A. What do you mean, at one time?

Q. At one period.

A. Oh, it all depends on what I intended to make. [1646]

Q. What?

A. It varies. I say, it all depends on what I intend to make. Some cakes I possibly would use six to eight eggs. Then I might use a dozen.

(Testimony of Homer G. Foster)

Q. What is that for, pastries?

A. Cookies, cakes, pies. I use eggs for several different things.

Q. You have described the inside of certain eggs.

A. Yes.

Q. Who was the first person that you ever described the inside of those eggs to after you left that ship? A. I wouldn't know off-hand.

Q. When did you first talk to any of the men here at this table?

A. What do you mean, when did I first talk to them?

Q. I mean just that: When was the first time——

A. When I arrived in Frisco, I would say, Monday the 11th.

Q. Monday the 11th of February of this year?

A. That is right.

Q. 1946? A. That is right.

Q. Now, did any of those men describe a watery egg to you, Mr. Foster? A. No, they did not.

Q. They did not? A. No, sir.

Q. Did any of those men describe a blood spot in an egg to you? A. They did not.

Q. Did any of those men describe a quick breaking of the yolk to you? A. They did not.

Q. Where did you see these men?

A. When I came to the Federal Building here.

Q. How did you happen to come?

A. I was subpoenaed.

Q. By whom?

(Testimony of Homer G. Foster).

A. I imagine the United States Federal Court.

Q. Well, you imagine it. You got a direction to come to an office of these men here in this building, isn't that right?

A. I have the subpoena in my pocket.

Q. May I see it, please?

A. With the Court's permission.

The Court: Certainly.

The Witness: Thank you.

The Court: You may be seated.

(The witness handed a document to Mr. Faulkner.)

Mr. Faulkner: Q. Now, Mr. Foster——

A. Yes.

Q. When you got that document, instead of coming into court, you were taken into a room in this building, were you?

A. Whatever room is on here I reported at it. This case was postponed, I imagine. I was sent a night letter to report a week later.

Q. You were told to report at Room 418, Post Office Building, were you not?

A. That is right.

Q. That is on the 4th floor of this building, is that correct? A. That is right.

Q. Now, when you talked to these men——

Mr. Pratt: May I see the telegram?

Mr. Faulkner: Q. Was Mr. Brown there?

A. No, I didn't see Mr. Brown. [1648]

Q. You did not see Mr. Brown?

A. That is right.

(Testimony of Homer G. Foster)

Q. You saw some eggs being handled later than the 29th, that is, a couple of days after your affair with the ship steward, some men came aboard and they got seven or eight cases of eggs and candled them by the light, is that right?

A. You say got how many cases?

Q. Seven or eight? A. Possibly, yes.

Q. That is what you said awhile ago?

A. Yes.

Q. What happened to the remaining cases?

A. All the eggs were taken off the ship that were aboard when I arrived on there.

Q. At that time?

A. No. I told you a couple of days after these men came aboard.

Q. Then the eggs were all taken off?

A. That is right.

Q. But when the men were aboard and candling these seven or eight cases that came out of the chill box, what happened to the remaining eggs in the chill box?

A. They were left in there until they brought the new eggs on.

Q. Did the men who came aboard go in the chill box? A. They did.

Q. And they permitted some of them to remain there and took others in another part of the ship?

A. We were told not to use them.

Q. But these men took seven or eight cases of eggs to another part of the ship, is that right?

(Testimony of Homer G. Foster.)

A. I didn't see [1649] them take them anywhere on the ship.

Q. I thought you said you saw them do something with the eggs with a light.

A. They did that, but that doesn't mean they carried the eggs off after they got through with them.

Q. Where did they candle these eggs?

A. In front of the galley door.

Q. In front of what?

A. In front of the galley door—kitchen to you.

Q. They didn't candle them in the chill box?

A. No.

Q. How far is the galley door from the chill box?

A. The next deck. The chill box is below deck, and that is on the main deck.

Q. They brought them up?

A. They brought them upstairs to the galley, to a sink with a drainboard on it. They worked on that.

Q. Did you observe those eggs?

A. No, I was in the galley. They proceeded to there.

Q. Who brought the eggs up?

A. They probably did themselves.

Q. You did not help them in that respect?

A. No.

Q. What happened to those seven or eight cases when you were finished with them?

A. I don't know. You will have to ask them. I don't know.

(Testimony of Homer G. Foster)

Q. You do not know?

A. No, that is right.

Q. You do know later, however, all the eggs were removed from the ship?

A. That is right, I do. [1650]

Q. Did you see them removed?

A. I did. I was aboard the ship at the time.

Q. Did you help remove them?

A. I did not.

Q. You had nothing to do with the handling of them? A. That is not my duty.

Q. Whether it is your duty or not, you did not help handle the eggs? A. That is right.

Q. This butter that you described was rancid?

A. That is right.

Q. Salty?

A. I don't know about it being salty. I didn't taste it.

Q. You testified it was salty and rancid, did you not?

A. I didn't testify it was salty. I said it was rancid only.

Mr. Pratt: He said strong and rancid.

Mr. Faulkner: Q. Is that the word you used, strong and rancid? A. Possibly, yes.

Q. Did it have the taste——

A. I didn't taste it.

Q. What kind of taste did it have?

A. How would I know? I didn't taste it.

Q. How did you know it was rancid?

A. I could smell it.

(Testimony of Homer G. Foster)

Q. Smell it? A. That is right.

Q. So your judgment of the butter, whatever it may be, that it was strong and rancid, is based not on taste, is that right?

A. In handling food you get to know what food is, and I have been handling food for about twenty years.

Q. Do you think you could judge butter by smell alone? [1651]

A. I would say I could. I could judge it being rancid, yes.

Q. And you could tell it tasted strong by smell, is that right?

A. I didn't say it tasted strong. I don't know how it tasted. I only know it had a rancid, strong odor.

Q. Was the butter used by you?

A. No, it was not.

Q. You used none of the butter at all?

A. I brought the butter up to use, and when I found it rancid I didn't use it.

Q. What?

A. I said I brought the butter up to use and when I found it rancid, I wouldn't use it.

Q. Was any part of the butter that was in the chill room, that is, the butter in the dairy box, were the cases opened?

A. Only the one I got the butter out of.

Q. How much of the butter that was in the case that you saw, how much had been removed?

A. I don't know: I don't remember.

(Testimony of Homer G. Foster)

Q. You know, however, that some had been removed? A. Yes.

Q. Did you talk to the men here last night before you came onto the witness stand here today?

A. Talk to them where?

Q. Any place. A. No.

Q. The only time you talked to any agent of the Government was on the 11th of February?

A. That is right.

Q. In Room 418? A. That is right.

Q. Until you came into court this morning?

A. I reported back last Wednesday and was told it was postponed.

Q. Did you talk to them then?

A. No, only to ask them when [1652] the case would be, and they gave me a future date.

Q. Did you talk to them this morning?

A. I did not.

Q. Or last night. A. No, I did not.

Q. Were you in court yesterday?

A. I was, yes.

Q. Weren't you talking to these men in that little room there yesterday?

A. Talking to them? No.

Q. You were not?

A. No, just sitting around and chatting about things, but not to these men here.

Q. Didn't you talk to Mr. Magee and the gentleman there yesterday in the little anteroom?

A. I did not, other than to speak to pass the time of the day with them.

(Testimony of Homer G. Foster)

Q. You did speak with them, didn't you?

A. Pass the time of the day.

Q. Whatever you said, you talked to them?

A. If you call saying "Good morning" or "Good afternoon" talking to them, then I talked to them.

Q. Did you talk to Colonel Hand, the man in the uniform? A. No, I did not.

Q. Or Mr. Houck?

A. Other than to say, "Good day" to him.

Mr. Faulkner: That is all.

Mr. Pratt: No redirect.

Mr. Faulkner: Q. Did you see Mr. Zirpoli there when you were talking to these men?

A. No, I did not.

Q. You didn't see him?

A. I never saw the man before in my life. [1653]

C. A. WIRTH,

called on behalf of the Government; sworn.

Direct Examination

Mr. Pratt: Q. Will you state your name, please? A. C. A. Wirth.

Q. That is spelled W-i-r-t-h, isn't it?

A. That is correct.

Q. Mr. Wirth, where is your home?

A. Los Angeles—Arcadia.

Q. That is near Los Angeles?

(Testimony of C. A. Wirth.)

A. Near Los Angeles.

Q. What is your occupation?

A. I am Egg Standardization Supervisor for the State Department of Agriculture of California.

Q. You are an employee of the State of California? A. That is correct.

Q. How long have you occupied that position?

A. Approximately eleven years.

Q. Are you familiar with food products in connection with your official position with the State of California? A. I am.

Q. What preparation have you had in connection with your work as a food standardization official of the State of California?

A. Graduate of the University of Minnesota, Agriculture; have had some fourteen years previous experience with raising, candling eggs, acting as dealer, candling eggs for hatcheries, buying and selling in the market, and then eleven years at constant work with grading and candling eggs for the State [1654] Department of Agriculture.

Q. Early in the month of November 1943, did you have occasion to go to the steamship William S. Clark in the harbor at Long Beach, California?

A. I did.

Q. With whom did you go?

A. Mr. H. W. Bradway of Los Angeles County, Agriculture Commissioner's office, and Mr. Rynerson from the Federal Food and Drug Administration.

Q. The three of you went together didn't you?

(Testimony of C. A. Wirth.)

A. That is correct.

Q. And when was this? What date?

A. November 30, 1943.

Q. And when you got to the ship what did you do and these other men do?

Mr. Faulkner: Having in mind the testimony, until the product is identified, it is subject to my objection, your Honor, and an exception to the Court's ruling.

The Court: The objection may be overruled. Proceed.

Mr. Pratt: Will you read the question?

(The last question was read.)

A. We boarded the ship and contacted the steward at the time, asking him about the location of the eggs on board. He, as I remember the circumstances, showed us where the eggs were at this time.

Q. Where were they?

A. In a storage box.

Q. Chill box?

A. Chill box, their regular storage compartment in the ship. [1655]

Q. When you and these other two gentlemen got to that storage place or chill box, what did you do?

A. I think just at that time it was just about lunch time, and if I remember correctly, we had lunch, and then after finishing lunch we made the trip back down to the box.

Q. You had lunch on the boat?

A. We had lunch on the boat.

(Testimony of C. A. Wirth.)

Q. All right.

A. As I remember, the steward—we asked him to take from that stack a case of eggs that had not been handled or opened, and he took it out of the box, and there was a table in—well, I would call it an entranceway or a hall—I don't know the ship term for it—and he sat the eggs on this table.

Q. In the case?

A. In the case without the case having been opened. And then we opened the case, took the lids off the case, and then candled and graded all the eggs that were in that container.

Q. All the eggs in that case?

A. All the eggs in that case.

Q. And what did you find in connection with your examination or inspection of those eggs?

A. May I refer to notes to be exact?

Q. Yes. Is this the record you made at the time?

A. This record was made on the boat that date. Some of the record is in my writing. Some of it is in Mr. Bradway's. It depended on who actually did the candling and the other party put down the record. [1656]

Q. Just keep your seat, Mr. Wirth. Now, will you answer the question?

Mr. Faulkner: Before the witness testifies from his book, may I see it?

The Court: Yes. We will have a recess to give you a perfect opportunity to see it and examine it.

and in the interest of time I will excuse the jury. They may be excused and return at two o'clock.

(Thereupon a recess was taken until 2:00 o'clock p.m.) [1656-a]

Afternoon Session, February 21, 1946, 2 p.m.

The Court: Waive the roll call, stipulating and agreeing all the jurors are present and seated in the box.

C. A. WIRTH,

recalled;

Direct Examination (Resumed)

Mr. Pratt: May I have the last question read, your Honor?

(The reporter read as follows:

"What did you find in connection with your examination or inspection of those eggs?")

Mr. Pratt: The question that was asked you just before adjournment, Mr. Wirth, was to state to the jury what you found, what you did and what you found in connection with the eggs which you examined there on the steamship William S. Clark at the date you mentioned, which, I think, was—was it the 3rd of November, 1943?

Q. Will you in your own way state what you found? I think you stated first in answer to that question that you had certain memoranda which you had kept at the time, in which you were, I judged, about to refresh your recollection on; is that correct? A. That is correct.

(Testimony of C. A. Wirth.)

Q. Will you state what you did and what you found in connection with these eggs?

A. In the first case that was examined they found—I found in there three inedible eggs, mixed [1657] rots, or addled eggs, 96 Grade B eggs, 261 Grade C eggs. The case had on the end of it the numbers "3737".

Q. You examined all the eggs in that case, did you? A. Yes.

Q. Which would be 30 dozen, or 360 eggs; is that right? A. Yes.

Q. You spoke of the case having the number 3737 on the end. Was there anything else on the end of that egg case?

A. I have no notation of any kind indicating whether there was or not.

Q. Did you bring that case with you?

A. No.

Q. Go to the next case, if you please.

A. Case No. 2. We examined—I examined 180 *cases*, or half.

Q. Half of the eggs in the case? A. Yes.

Q. What did you determine as to these eggs?

A. I found that 15 of these eggs were inedible, 6 of them being addled or mixed rots, and 9 of them we classified as spot rots. 33 of them were Grade B, and 132 were Grade C eggs.

Q. How about that case, how was that case marked?

A. I have no special notation on that case and I do not remember.

(Testimony of C. A. Wirth.)

Q. Then this third case that you examined, how many eggs did you candle in that third case?

A. All the third case—in the third case we candled—I candled 180 eggs.

Q. That is, half of the eggs in the case?

A. Yes.

Q. With what result?

A. I found 36 inedible eggs, 3 of them being addled and mixed rots, and 23 moldy eggs, and 10 [1658] of them spot rots. 27 were grade B, 110 were grade C.

Q. Do you remember the marking on that case?

A. I have no special notation as to the marking.

Q. Then as to the fourth case, how many eggs did you candle?

A. Candled 180 eggs in the fourth case, half of the case.

Q. With what result?

A. Found 40 inedible eggs. Of these 6 were addled, or mixed rots, 29 were moldy, and 5 were spot rots. There were 20 B grade, 20 grade B's and 120 grade C.

Q. Do you have any notation of the marking on that case?

A. I have no notation in this book of markings on that case.

Q. The next case that you examined, case No. 5, how many eggs did you examine or candle?

A. Examined 180 eggs in case No. 5.

Q. What did you find?

A. We found—I found 6 inedible eggs, consist-

(Testimony of C. A. Wirth.)

ing of 4 that were addled or mixed rots, one moldy, and one spot rot; 51 grade B and 123 grade C.

Q. That is out of a total of 180?

A. That is correct.

Q. Then as to case No. 6, how many eggs did you examine by candling?

A. In case No. 6, 180 eggs were examined.

Q. What did you find?

A. Found 8 that were inedible, 4 addled or mixed rots, 1 moldy, and 3 spot rots; 49 that were grade B and 123 that were grade C.

Q. Did you observe any marking on either case 5 or case 6, of which you have a notation?

A. I have no special notation as to the markings. [1659]

Q. In these six cases did you find any AA grade eggs? A. I did not.

Q. Did you find any grade A eggs?

A. I did not.

Q. The total number of eggs that you candled on that occasion was how many?

A. If my arithmetic is correct, 1260.

Q. Of those 1260 eggs, have you a record, have you computed the result of the whole 1260 eggs?

A. I haven't the additions in this record, here. I have computed them also for the purpose of the record.

Q. Do you have that record with you?

A. I haven't it with me.

Q. You haven't it with you?

A. But I had it typed to use.

(Testimony of C. A. Wirth.)

Q. I have a paper here. Is this the paper that was prepared by you? A. It is.

Q. Did you make the computation that is recorded at the bottom of that page? A. I did.

Q. Then from that paper which you prepared, on what date—when did you prepare that paper?

A. To the best of my recollection, on November 5th or 6th—no, I have it dated here November 4th. It was the next day.

Q. The next day? A. Yes.

Q. In the entire result of the examination by candling of these 1260 eggs——

A. There was a total of 1260 eggs candled. Of these eggs, 108 were inedible, that was 8.6 percent; 276 of the eggs were grade B, which was 21.9 percent; 876 of these eggs were grade C, which is 69.5 percent. [1660]

Q. In whose company did you make this examination?

A. In the company of Mr. H. W. Bradway and Mr. Rynerson.

Q. Mr. Bradway is who?

A. He is an inspector for the Los Angeles Agricultural Commissioner's office, and his duties are the egg examinations, inspecting eggs for grade and condition.

Q. Who is Mr. Rynerson?

A. He is connected with the Federal Food & Drug Administration and I am not entirely familiar with his entire duties, but among them is work on eggs.

(Testimony of C. A. Wirth.)

Q. In connection with this task of examining the eggs on that day, November 3, 1943, did you make an examination of the chill box where the eggs were then located? A. I did.

Q. At that time what was the condition of that chill box on the boat?

A. Very satisfactory for the storage of eggs.

Q. After you had examined the eggs, as you have stated, what did you then do?

A. I requested the—I will start over again on that. Eggs were—I waited until the truck drove onto the dock with replacements for the eggs that were on the boat. The eggs then that were on the boat, the ones we had examined, were taken off by the ship's crew and placed on the dock. The eggs that were brought down by the truck were carried onto the dock. I waited until the eggs had been loaded onto the truck, that freight line——

Q. You mean the eggs that were taken off the boat?

A. Off the boat, were loaded onto the truck. When they were on that truck I issued a violation notice on forms that we have [1661] in the State Department of Agriculture, notifying the driver of the truck that the eggs were in violation of the Agricultural Code, and notifying——

Q. Of the State of California?

A. Of California. Notifying him to only move those eggs upon the direction of an enforcement officer, and he signed the violation notice.

(Testimony of C. A. Wirth.)

Q. Who was this who signed the violation notice?

A. A driver of the truck for the freight lines that was hauling the eggs.

Q. That is, the California Freight Lines?

A. The California Freight Lines.

Q. Did you have any communication at that time with anyone connected with Nye & Nissen?

A. Not at that time.

Q. After these eggs were loaded on this truck, what became of the truck, as far as you know?

A. As far as I know, it was driven directly to their plant in Los Angeles.

Q. Whose yard?

A. The California Freight Lines yard on either Fourteenth or Fifteenth Street, on East Fourteenth or Fifteenth, in Los Angeles.

Q. Did you go along with it?

A. I did not at that time. The driver stated that the eggs——

Q. Never mind what the driver stated. The truck went, as you say, to their yard, and you remained in Long Beach?

A. No. We returned home. It was getting later in the day, and Mr. Bradway, and Mr. Rynerson and I returned to Los Angeles. [1662]

Q. In examining the eggs there on the boat, did you examine the cases in which they were contained?

A. We examined them as much as was possible, and looked at a large number of cases.